Filed 8/7/19 In re I.F. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re I.F. et al., Persons Coming Under the Juvenile Court Law.	
TULARE COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. C.F., Defendant and Appellant.	F078952 (Super. Ct. No. JJV071171A-E) **OPINION**

THE COURT[*]

APPEAL from orders of the Superior Court of Tulare County. Robin L. Wolfe, Judge.

Carol A. Koenig, under appointment by the Court of Appeal, for Defendant and Appellant.

Deanne H. Peterson, County Counsel, John A. Rozum and Amy-Marie Acosta, Deputy County Counsel, for Plaintiff and Respondent.

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[*] Before Franson, Acting P.J., Meehan, J. and Snauffer, J.

Appellant C.F. (mother) appeals from the juvenile court's orders under Welfare and Institutions Code section 366.26[1] terminating her parental rights as to her five children. Mother contends on appeal (1) the Tulare County Health and Human Services (the agency) failed to adequately comply with the notice requirements of the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) as to all five children, and (2) the record should be clarified as to whether I.T. (father) was the presumed or alleged father as to one of the children. The agency concedes lack of compliance with ICWA notice requirements and agrees remand is required for compliance, but contends the finding regarding father's status is no longer appealable. We agree.

DISCUSSION

I. ICWA Notice Compliance

In state court proceedings seeking foster care placement or termination of parental rights "where the court knows or has reason to know that an Indian child is involved," ICWA requires notice to the parent or Indian custodian and the Indian child's tribe. (25 U.S.C. § 1912(a).) Similarly, California law requires notice to the parent, legal guardian or Indian custodian and the Indian child's tribe, if the agency or the court "knows or has reason to know that an Indian child is involved" in the proceedings. (§ 224.2, subd. (a) [former § 224.3, subd. (d)]; see *In re Breanna S.* (2017) 8 Cal.App.5th 636, 649–650; *In re Michael V.* (2016) 3 Cal.App.5th 225, 232; Cal. Rules of Court, rule 5.481(b)(1) [notice is required "[i]f it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480," which includes all dependency cases filed under section 300].) Notice to Indian tribes is central to effectuating ICWA's purpose because it enables a tribe to determine whether the child

[1] All statutory references are to the Welfare and Institutions Code unless otherwise noted.

involved in a dependency proceeding is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the matter. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8.)

Mother originally testified that neither she nor father had any Native American ancestry. But on September 7, 2018, at J.T.'s detention hearing, mother testified that father had Cherokee Native American ancestry. This information mandated compliance with ICWA with regard to all five children, all of whom are father's biological children. The parties agree that the proper procedure for ICWA notice was not followed. Because the agency violated the notice requirements of ICWA, and the juvenile court failed to ensure compliance with those requirements (see *Isaiah W., supra,* 1 Cal.5th at pp. 6–15), we will conditionally reverse.

II. Father's Paternity Status

Mother asks that we also remand for clarification of father's paternity status regarding the youngest child, J.T. At J.T.'s detention hearing on September 7, 2018, the juvenile court found father to be J.T.'s presumed father, based on mother's testimony that father had been present for J.T.'s birth and had signed his birth certificate. In the September 28, 2018 jurisdiction report, the social worker recommended father be found as the alleged father because he had not made himself available to the agency and had not shown "it would be in the best interest of [J.T.]" The social worker also added that father was only the alleged father at that time because the agency had not been able to obtain J.T.'s birth certificate to confirm it bore father's name. At the jurisdictional hearing, however, the court confirmed to county counsel that the court had already found father to be presumed. Thus, the court did not adopt the recommended finding of the social worker's report. Nevertheless, at the October 24, 2018 dispositional hearing, the court adopted the social worker's findings in the September 28, 2018 report, which included a finding that father was J.T.'s alleged father, although he was listed as presumed father on the signed minute order. At that hearing, (a different) county counsel stated: "[Father] is

at this point only the alleged father; however, if the court did raise [his] status to presumed, [the] agency would ask the court to deny services to him … [because] his parental rights have been terminated as to [J.T.'s] siblings, and also … [because] after the diligent search, [father] cannot be located." No comments or objections were made following this statement, and mother did not appeal the dispositional orders. In the February 6, 2019 report prepared for the parental rights termination hearing, the social worker reverted to calling father J.T.'s presumed father, but the dispositional orders signed by the court referred to father as alleged The court found that ICWA did not apply and terminated parental rights as to both mother and father.

We can find no reference to a finding by the court changing father's status from presumed to alleged. We also can find no objection by mother to that changed status, and, more significantly, no appeal from the dispositional orders. Thus, although we agree that the reason for the change is unclear, we also agree with the agency that mother's failure to timely appeal from the dispositional orders precludes our review. A dispositional order is an appealable judgment (§ 395), and an appeal from that order must be filed within 60 days of the date the order is rendered. (Cal. Rules of Court, rule 8.406(a)(1).) "One of the most fundamental rules of appellate review is that the time for filing a notice of appeal is jurisdictional. '[O]nce the deadline expires, the appellate court has no power to entertain the appeal.' " (*In re A.O.* (2015) 242 Cal.App.4th 145, 148.) "This '… rule' holds 'that an appellate court in a dependency proceeding may not inquire into the merits of a prior final appealable order,' even when the issues raised involve important constitutional and statutory rights." (*In re Z.S.* (2015) 235 Cal.App.4th 754, 769–770.) Here, 60 days had already elapsed after the October 24, 2018 dispositional orders when mother appealed on March 11, 2019, from the section 366.26 termination orders. Accordingly, the dispositional orders were final and no longer appealable, and mother cannot now challenge them on her appeal from the later orders

terminating parental rights. (*In re Jesse W.* (2001) 93 Cal.App.4th 349, 355 ["A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order."].)

In any event, as the agency recognizes, ICWA notice compliance is required based on father's status as the children's biological father, a status that has not been challenged.

DISPOSITION

The juvenile court's section 366.26 orders of February 6, 2019, are conditionally reversed. The matter is remanded with directions to conduct further proceedings necessary to establish full compliance with the ICWA notice requirements as to all five children. The juvenile court shall then determine whether the ICWA notice requirements have been satisfied and whether the children are Indian children. If the court finds they are Indian children, it shall conduct a new section 366.26 hearing, as well as all further proceedings, in compliance with ICWA and related California law. If the court does not so find, the court shall reinstate its section 366.26 orders.